

Posted: 2/1/2000
3:45 p.m.

Order 2000-2-2

71540



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 1st day of February, 2000

Complaint of

NORTHWEST AIRLINES, INC.

Against

**THE COUNCIL OF THE EUROPEAN
UNION AND THE GOVERNMENTS OF
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

Served: February 3, 2000

Docket OST-99-5011 - 33

ORDER GRANTING WAIVER

On January 15, 1999, Northwest Airlines, Inc. (Northwest) filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States) regarding EU regulations that would restrict the use of hushkitted aircraft. Northwest states that the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements. Northwest urges the Department to take action to redress the economic harm caused by the EU regulation, which it argues constitutes an "unjustifiable or unreasonable...practice against an air carrier" and "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market," warranting action under the statute.¹

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited (filed jointly); Lufthansa German Airlines; the Cargo Airline Association; Societe Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services, Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Air cargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.;

¹ We summarized the complaint more fully in Order 99-1-10.

Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.²

By a series of actions the Department has extended the deadline for action on Northwest's complaint in order to facilitate a negotiated resolution to the issues raised.³ The latest extension runs through February 1, 2000. Subsequent to our latest action in this matter, the U.S. Government has announced its intention to seek resolution of the hushkit matter under the dispute resolution provisions of the Chicago Convention.

On January 28, 2000, Northwest agreed to a further limited waiver of the statutory deadline, specifically, through August 1, 2000, in light of the U.S. Government's announcement of its intention to ask the International Civil Aviation Organization (ICAO) Council to resolve this dispute under Article 84 of the Chicago Convention. Northwest states that it will continue to follow closely the U.S. Government's efforts in this regard, and will review the appropriateness of continuing to waive the deadline, in light of the progress made in ICAO towards a final resolution of this dispute.

After careful consideration of Northwest's submission and other relevant factors, we believe that the public interest is best served by granting Northwest's waiver and deferring the deadline for action on the complaint through August 1, 2000.⁴

ACCORDINGLY,

1. We grant the request of Northwest Airlines, Inc. for a waiver of the statutory deadline in order to defer through August 1, 2000, the period for taking action on its complaint in Docket OST-99-5011; and
2. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, France, and the United Kingdom in Washington

² The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 99-5-7.

³ See Order 99-5-7 and orders cited therein at 2.

⁴ Under the Department's regulations, answers to Northwest's request would not be due until seven business days after its filing, *i.e.* February 9, 2000. As that would be after expiration of the current deadline, February 1, 2000, we have decided to act on Northwest's request without awaiting expiration of the period for answers. Should any answers be filed, we will address them in a subsequent order.

D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Office of the United States Trade Representative); and the U.S. Department of Commerce (Office of Service Industries).

By:

A. BRADLEY MIMS

Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*